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Miller Order on Plaintiff's Motion to Compel Discovery Pursuant to O.C.G.A. § 9-11-37

Elizabeth E. Long

Fulton County Superior Court, Judge

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MICHAEL MILLER,)
)
 Plaintiff,)
)
 v.)
) **Civil Action File No.**
) **2015CV256817**
 JIM LYNCH; FIBERLIGHT, LLC;)
 THERMO DEVELOPMENT, INC.; FL)
 INVESTMENT HOLDINGS, LLC; NT)
 ASSETS, LLC, and THERMO)
 TELECOM PARTNERS, LLC,)
)
 Defendants.)

This Court, having considered Plaintiff's Motion to Compel Discovery Pursuant to OCGA § 9-11-37, finds as follows:

Through discovery, Plaintiff sought documents and information related to the Thermo Companies, including generally, internal correspondence within the Thermo Companies,

¹ Thermo Telecom Partners, LLC, was added as a party on February 23, 2016, and is included in “Thermo Companies.”

financials from any of the Thermo Companies, formal or informal valuations of FiberLight, and litigation materials from lawsuits that are at the center of Defendants' counterclaims.

Specifically, Plaintiff seeks to compel responses to the following discovery Requests:

Defendants' Responses to Plaintiff's First Set of Interrogatories

Interrogatory #2 to Lynch: State whether you own or control any of the Thermo Companies, and identify which companies you own or control and provide the nature and percentage of your ownership interest with respect to each company. Lynch responded with a boilerplate objection that the request sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This Court disagrees and the Motion to Compel as to this Interrogatory is **GRANTED**.

Interrogatory #2 to Thermo Companies: Identify your owners, directors, and officers. Thermo Companies responded with a boilerplate objection that the request sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This Court disagrees and the Motion to Compel as to this Interrogatory is **GRANTED**.

Interrogatory #3 to the Thermo Companies: For each owner identified above, provide the percentage of ownership interest and the nature of the ownership interest at the time of Plaintiff's termination from FiberLight and the percentage of ownership interest and the nature of the ownership interest at the time of answering these Interrogatories. Thermo Companies objected that the request was overly broad and unduly burdensome, and sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This Court agrees. The Motion to Compel as to this Interrogatory is **DENIED**.

Interrogatory #5 to the Thermo Companies: Describe your email communication systems in detail, including any email servers you use, software you use for email, policies

regarding email, backup systems for emails, and any webmail applications you use.

Interrogatory #6 to the Thermo Companies: Describe your electronic records retention policy governing the storage and destruction and electronically stored information (ESI), including in your answer (1) which types of ESI are retained, (2) how and where the retained information is backed up and stored, (3) and specific intervals of retention. Thermo Companies objected that the Interrogatories were overly broad and unduly burdensome, and sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Thermo Companies' attorneys emailed Plaintiff's attorneys to say that the only people at the Thermo Companies with information about the case are Lynch and Regina White, and noted that their accounts have been preserved consistent with FiberLight ESI and retention policies. FiberLight answered verbatim interrogatories in its Amended Responses to First Interrogatories #4 & 5. Thermo Companies should provide similar information as FiberLight did about the subject matter of these Interrogatories. As such, Motion to Compel as to this Interrogatory is **GRANTED**.

Interrogatory 6 to Lynch, Interrogatory 8 to the Thermo Companies, and Interrogatory 7 to FiberLight: Identify each person who to your best knowledge, information and belief: (a) has knowledge of the facts and circumstances material to the allegations of the Complaint, [etc.,]... (b) has any information regarding the whereabouts of any documents, material, or tangible evidence pertaining to the allegations of the Complaint, [etc.,]. Defendants responded with boilerplate objections, but also provided the names of several individuals "most familiar with" the facts at issue. In response to this Motion to Compel, Defendants assert that the inclusion of the "most familiar with" language was a clerical error and that they have provided the names of all people with information. The Court will accept this representation but

Defendants should amend their responses accordingly. To the extent that amendment of the Interrogatories is required, the Motion to Compel is **GRANTED**.

Defendants' Responses to Plaintiff's First Set of Requests for Production

Request for Production #3 to FiberLight, #2 to Lynch, and #2 to Thermo Companies request correspondence between Plaintiff and Lynch regarding Plaintiff's employment at FiberLight, **Request for Production #4 to FiberLight, #3 to Lynch, and #3 to Thermo Companies** request correspondence between Coyne and Lynch regarding Plaintiff's employment at FiberLight, and **Request for Production #5 to FiberLight, #4 to Lynch, and #4 to Thermo Companies** request correspondence between Lynch and any other person besides Plaintiff and Coyne regarding Plaintiff's employment at FiberLight. Defendants responded with a boilerplate objection that the request was overly broad and unduly burdensome, and sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Despite the objection, Defendants stated that they have produced and will produce "non-privileged documents, if any, that are relevant to Plaintiff's claims." Plaintiff argues he should be allowed to review all communications regarding his employment. This Court agrees. These requests were narrowly tailored to request correspondence about Plaintiff's employment with FiberLight, which is central to this case, and put simply, Defendants should produce any correspondence to or from Lynch regarding Plaintiff's employment. As such, the Motion to Compel as to these Requests for Production is **GRANTED**.

Request for Production #6 to FiberLight, #6 to Lynch, and #5 to Thermo Companies request any and all correspondence sent by the Plaintiff to Lynch, or by Lynch to the Plaintiff, regarding the Plaintiff. **Request for Production #7 to FiberLight, #7 to Lynch, and #6 to Thermo Companies** request any and all correspondence sent by Coyne to Lynch, or by Lynch to

Coyne, regarding the Plaintiff. **Request for Production #8 to FiberLight and #9 to Lynch** request any and all correspondence sent by anyone other than Plaintiff or Coyne to Lynch, or by Lynch to anyone other than Plaintiff or Coyne, regarding the Plaintiff. This Court agrees with Defendants that the phrase “regarding the Plaintiff” is vague, ambiguous, overly broad, and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. As such, the Motion to Compel as to these Requests for Production is **DENIED**.

Request for Production #10 to FiberLight, #10 to Lynch, and #8 to Thermo Companies request any and all correspondence sent by the Plaintiff to Lynch, or by Lynch to the Plaintiff, regarding any admission, denial, affirmative defense, or counterclaim contained in the Answer. **Request for Production #11 to FiberLight, #11 to Lynch, and #9 to Thermo Companies** request any and all correspondence sent by Coyne to Lynch, or by Lynch to Coyne, regarding any admission, denial, affirmative defense, or counterclaim contained in the Answer. **Request for Production #12 to FiberLight, #13 to Lynch, and #10 to Thermo Companies** request any and all correspondence sent by anyone other than Plaintiff or Coyne to Lynch, or by Lynch to anyone other than Plaintiff or Coyne, regarding any admission, denial, affirmative defense, or counterclaim contained in the Answer. Defendants’ boilerplate objections are baseless. To the extent that Defendants have documents responsive to these requests, they must be produced. The Motion to Compel as to these Requests for Production is **GRANTED**.

Request for Production #5 to Lynch requests any and all correspondence sent by any person other than Plaintiff or Lynch to Coyne, or by Coyne to anyone other than Plaintiff or Lynch, regarding the employment of Plaintiff at FiberLight. To the extent Lynch possesses or has access these documents, he must produce them. The Motion to Compel as to this Request for Production is **GRANTED**.

Request for Production #8 to Lynch requests any and all correspondence sent by the Plaintiff to Coyne, or by Coyne to the Plaintiff, regarding the Plaintiff. As noted above, the phrase “regarding the Plaintiff” is vague, ambiguous, overly broad, and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. As such, the Motion to Compel as to this Request for Production is **DENIED**.

Request for Production #12 to Lynch requests any and all correspondence sent by Coyne to the Plaintiff, or by Plaintiff to Coyne, regarding any admission, denial, affirmative defense, or counterclaim contained in the Answer. Defendants’ boilerplate objections are baseless. To the extent Lynch possesses or has access these documents, he must produce them. The Motion to Compel as to this Request for Production is **GRANTED**.

Request for Production #7 to Thermo Companies requests any and all correspondence sent by any person other than Plaintiff or Coyne to Lynch, or by Lynch to anyone other than Plaintiff or Coyne, regarding the Plaintiff. As noted above, the phrase “regarding the Plaintiff” is vague, ambiguous, overly broad, and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. As such, the Motion to Compel as to this Request for Production is **DENIED**.

Defendants’ objected to several of the above Requests for Production stating that the documents are likely in the possession of Plaintiff and can be more conveniently be obtained from Plaintiff is a baseless objection. To the extent documents were withheld under this objection, they should be produced.

Defendants' Responses to Plaintiff's Second Set of Interrogatories and Second Set of Requests for Production

Interrogatory #7 to Lynch asks what percentage of Plaintiff's interest in FiberLight was absorbed or otherwise acquired by an entity in which Lynch is a member or possesses any interest. In a letter dated February 12, 2016, Defendants provided a breakdown of the ownership interest in FiberLight both before and after Plaintiff's termination. Lynch should amend his responses to the Interrogatory accordingly, but otherwise, based on FiberLight's representation to the Court, the Motion to Compel as to this Interrogatory is **DENIED as MOOT**. Plaintiff claims Lynch has not produced any documents relied upon in responding to this Interrogatory as requested in **Request for Production #1 to Lynch**. However, Lynch asserts that he provided all responsive documents in response to Plaintiff's first document request. As such, the Motion to Compel as to this Request for Production is **DENIED**.

Request for Production #4 to FiberLight requests all valuations of FiberLight performed by any third party or by FiberLight itself. FiberLight asserted in its verified response that it provided all responsive non-privileged documents. Based on FiberLight's representation, the Motion to Compel as to this Request for Production is **DENIED**.

Request for Production #11 to FiberLight requests all documents produced by FiberLight to Mary Jane Coyne in regard to the value of FiberLight. FiberLight responded with a boilerplate objection that the request was overly broad and unduly burdensome, and sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This objection is baseless. However, in a letter dated February 12, 2016, counsel for FiberLight clarified that it had no documents responsive to this request outside of financial information of FiberLight it has previously produced to Plaintiff. FiberLight should amend its responses to the

Request for Production accordingly, but otherwise, based on FiberLight's representation to the Court, the Motion to Compel as to this Request for Production is **DENIED as MOOT**.

Request for Production #12 to FiberLight requests all transcripts from all depositions taken in any other matter in which Lynch provided testimony to the value of FiberLight. FiberLight responded with a boilerplate objection that the request was overly broad and unduly burdensome, and sought irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. This objection is baseless because the valuation of FiberLight is a central issue in this case and Plaintiff is entitled to discover this information. However, Defendants argue that much of the information sought from other lawsuits is protected under a Confidentiality Order and Defendants have been unsuccessful getting the other litigants' permission to produce these documents. To the extent that FiberLight can produce these deposition transcripts, Plaintiff is entitled to them. As such, the Motion to Compel as to this Request for Production is **GRANTED**.

Request for Production #7 to FiberLight requests all documents produced by FiberLight or Cbeyond in Cbeyond's lawsuit against FiberLight. **Request for Production #8 to FiberLight** requests all transcripts from all depositions taken down in Cbeyond's lawsuit against FiberLight. The Court agrees—both of these requests are overly broad and unduly burdensome, and seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Much of the discovery to the merits of the Cbeyond case will be unrelated to the case at hand. As such, the Motion to Compel as to these Requests for Production is **DENIED**.

Request for Production #9 to FiberLight requests all documents produced by FiberLight or TAM in TAM's lawsuit against FiberLight. **Request for Production #10 to FiberLight** requests all transcripts from all depositions taken down in TAM's lawsuit against

FiberLight. Again, the Court agrees that both of these requests are overly broad and unduly burdensome, and seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. As with the Cbeyond litigation, much of the discovery to the merits of the TAM case will be unrelated to this case. As such, the Motion to Compel as to these Requests for Production is **DENIED**.

Request for Production #2 to the Thermo Companies requests all financial statements, public or internal, for each of the Thermo Companies showing the assets owned by the company. **Request for Production #6 to the Thermo Companies** requests all operating agreements for NT Assets, LLC, and FL Investment Holdings, LLC from 2005 to the present. **Request for Production #7 to the Thermo Companies** requests the Shareholder Agreements, Articles of Incorporation, and Bylaws of Thermo Development, Inc. **Request for Production #8 to the Thermo Companies** requests any document showing a transfer of assets from Thermo Telecom Partners, LLC to any of the Thermo Companies. As Defendants note in their response brief, the corporate structure of these entities is not relevant to what fiduciary duties these entities as members of FiberLight may or may not have owed to Plaintiff. Nor is this information necessary to strike an appropriate jury. Therefore, these Requests are overbroad and seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. The Motion to Compel as to these Requests for Production is **DENIED**.

Plaintiff's request for attorneys' fees under O.C.G.A. § 9-11-37 is **DENIED**.

SO ORDERED this 15th day of March, 2016


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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